

## Zapruder Film

As many of the issues surrounding the monetary appraisal of moving issues were highlighted in the legal dispute on the value of what is arguably the most famous piece of film in the world, it is worthwhile looking at the disposition of the Zapruder film in some detail.

On November 22, 1963, Abraham Zapruder, a Dallas businessman, went downtown to see the motorcade of President John F. Kennedy. He had his Bell & Howell 8mm camera with him and he captured the assassination of the President in 494 frames of Kodacolor II, a 6-foot length of film one-quarter of an inch wide, with a running time, when projected at the appropriate speed, of 26 seconds. Approximately 27 percent of the film shows police officers on motorcycles accompanying the motorcade, and approximately 73 percent contains images of the limousine in which the President was riding with clear images of the President at the time he was shot. Although the images on the film remain clear, the film has been broken in two places and spliced together, and one or two frames are missing from the camera original.<sup>5</sup>

The film was licensed by Mr. Zapruder to Time Inc. (publisher of *Time* and *Life* magazines) for \$150,000, to be paid in installments of \$25,000 each. The photos were sold to news magazines around the world by Time Inc., as well as appearing in *Time* and *Life*. After *Life* folded in 1972, the Zapruder family (Zapruder died in 1970) was allowed to buy back the original film and the principal rights for one dollar.

Shortly after the assassination and the murder of Lee Harvey Oswald by Jack Ruby on November 24, 1963, President Johnson appointed a commission headed by Chief Justice Earl Warren of the Supreme Court (President's Commission on the Assassination of President Kennedy, also known as the Warren Commission) to investigate the matter. The Zapruder film was a vital piece of the evidence that the Commission considered in reaching their conclusion that the assassination was the work of a lone gunman and that the gunman was Lee Harvey Oswald. This decision is still being challenged by historians, private investigators, and filmmakers (*JFK* [1991], directed by Oliver Stone) who maintain that there were two or more assassins, and that the assassination was the result of a conspiracy that has not yet been revealed. The Zapruder film is at once the most complete recording of President Kennedy's assassination and a challenging historic document that, over the past thirty-nine years, has been the focus of

dozens of attempts to answer the various questions surrounding the death of the President.

After securing the copyright in the film Zapruder's family (wife Lillian, son Henry, and daughter Myrna) transferred ownership to LMH Company, a Texas general partnership. In 1978 the LMH Company deposited the film with the National Archives and Records Administration for storage and safekeeping. The Zapruders continued to exercise their copyright rights, however, and between 1976 and 1997 the film earned \$878,997 in reproduction rights for the Zapruder family. When Lillian Zapruder Grossman died in 1994, her estate reported to the Internal Revenue Service that the film "has an appraised copyright and licensing value of \$512,000 based on the income generated from licensing activities."<sup>6</sup>

On August 1, 1988, the Assassination Research Board directed that the Zapruder film be transferred to the Records Collection within the National Archives and Records Administration. That same day the government seized the film itself, *but not the copyright for the film*. The seizure was pursuant to special legislation enacted by the U.S. Congress, and under the Fifth Amendment to the U.S. Constitution the owners of the film, LMH Company, were entitled to just compensation. To determine the just compensation, the United States and LMH entered into an arbitration agreement, dated October 15, 1998, under which three arbitrators were selected to determine the amount the government must pay as *just compensation* for its seizure of the film in the public interest.

The arbitration agreement actually stipulated that the amount determined by the arbitrators could not be more than \$30 million, a sum which the arbitrators described as "apparently a reflection of the fact that there is no readily apparent precedent to govern the determination of value in a situation such as this."

In attempting to establish a value for the film, the arbitrators received and reviewed prehearing briefs, examined numerous affidavits from appraisers and art auctioneers, and conducted two full days of hearings in Washington, D.C., at which appraisers and auctioneers for both sides testified.

The first point clarified in the decision was that the appraised value of the film as reported to the Internal Revenue Service in 1994 was a reflection of the value of the film *for purposes of licensing activities* and not a determination of value for the film *as an historic object*.



The second point was that because LMH Company retained control of the copyright the arbitrators determined that the government should only pay for the physical property and not for any collateral interests. The government did not dispute that the camera original of the Zapruder film has value as a collectible property, and its experts variously attributed values of \$748,000 and \$1,000,000 to the film.<sup>7</sup>

The LMH appraisers described the film as an *icon* and attributed values ranging from \$25,000,000 to no less than \$40,000,000.<sup>8</sup> Their rationale centered on the fact that the film was unique, that it was known around the world as *the Zapruder film*, and that it had extraordinary value in the open market because of its relationship to the late President and to an historic event that is generally regarded as one of the most important events in twentieth century American history.

LMH had also claimed that the seizure of the film had resulted in a loss of income of at least \$10,000,000. The arbitrators rejected that claim on the grounds that lost profits from business opportunities foreclosed by government seizures of this type are not subject to compensation (*United States v. General Motors Corp.*, 323 U.S. 373, 379, [1945]), nor are any business opportunities that would have resulted from collateral interests such as licensing, which LMH could still exercise as they controlled the copyright in the film.

The arbitrators focused exclusively on the *fair market value* of the physical property, the 6 feet of camera original that Abraham Zapruder exposed on that fateful day, the price that a willing seller and a willing buyer would hammer out in an unrestricted market. Appraisers for the government argued that there was no proved marketplace for the sale of camera original film. Appraisers for LMH argued that in the absence of such a market the arbitrators should judge the value of the film *as comparable to* the value of a number of well-known items of personal property sold in the past.

The problem with comparisons, argued the arbitrators, was that you cannot *predict with assurance* that the prices paid in the past for arguably similar items of personal property would be obtained today. The lack of an established market prompted the arbitrators to reject consideration of particular sales alleged to be comparable "if those sales appear questionable in light of the market as a whole." That view, the appropriateness of applying a single auction sale price as a general indicator of comparable values has been noted by several commentators on monetary appraisals. Any one price may have resulted from a set of conditions (rival collectors who are so competitive that the bidding is

no longer rational) that probably will never be repeated and does not reflect the *market value* for comparable works. Aaron Milrad argues that auction results are “no more than one indicator of a price achieved at a particular time and place of a particular object of personal property.”<sup>9</sup>

Witnesses for both parties recognized that although many historic films exist, there is little market history documenting the sale of camera original film. In fact no examples were presented in evidence. Films of the 1934 assassination of King Alexander of Yugoslavia, and films of the murder of national leaders such as Anwar Sadat, Rajiv Gandhi, Yitzhak Rabin, Benigno Aquino, and Robert Kennedy exist, but the camera originals have not been offered for sale. Films of famous events were also considered—the bombing of Pearl Harbor, the Wright Brothers’ flight at Kitty Hawk, and the explosion of the dirigible *Hindenberg*—and judged irrelevant as well, as there were no recorded sales of camera originals.

It is difficult to understand why the arbitrators bothered to review somewhat contemporaneous *historic* film from the sixties—monks immolating themselves in Vietnam, the summary street execution of a prisoner by a South Vietnamese officer, the image of a Vietnamese child running naked to escape the effects of napalm being dropped on her village, the crowds at Woodstock, a student kneeling beside the body of another student at Kent State University, the scene on the balcony after the assassination of Martin Luther King—when none of the appraisers documented a sale of a camera original for any of these iconic images. The government witnesses maintained that the reason there are no sales recorded for these and other referential images is that they are valued for their content, not as *relics or icons*, and that the desire for film content has been satisfied by access through archives and stock footage libraries.

Despite those reservations the arbitrators proceeded to consider auction sales results for works whose associations and considerable historic and cultural significance had assigned to them extraordinary value—President Eisenhower’s D-Day Order (\$200,000), President Lincoln’s “House Divided” speech (\$1.5 million), a broadsheet of the Declaration of Independence (\$2.4 million). Both sides agreed that a substantial valuation was warranted in this case of the Zapruder film, but one issue remained: how much?

Although both the government and LMH Company relied on qualified appraisers of historic documents and artifacts, the arbitrators concluded that the opinions of LMH’s qualified appraisers *and* “undisputed



world-class experts when it came to the role of auction houses and the process of auctioning to the public famous historical items" should prevail.<sup>10</sup> Their experience with Sotheby's and Christy's appeared to carry weight with the arbitrators in the absence of testimony by the government's appraisers to counter their predictions on what the Zapruder film would bring in an open auction.

The LMH appraisers started high, with one concluding that the film was worth at least \$25 million, and speculating that it could go for double or even triple that amount. The comparables here were works of art by Van Gogh, Monet, and Picasso. Another selected the *Codex Leicester* of Leonardo da Vinci as a benchmark and argued that if Bill Gates could be induced to bid \$30 million for the *Codex* than the Zapruder film would probably sell for \$25 million.

The government appraisers did not contradict this testimony, which after all was only speculation, and offered instead an argument based on the fact that the film changed hands in 1963 for \$150,000, which computed to \$780,000 in 1999 dollars. Their view, summed up in a minority report (the panel of three split two to one), was that the value of the film lay in the images, not in the 6-foot strip of celluloid that the government seized in 1992. The minority report conceded that the value of the film would be greatly enhanced through association with President Kennedy, but it pointed out that in a recent sale of Kennedy memorabilia the highest price paid was \$1.4 million for the 1776 desk upon which President Kennedy had signed the Nuclear Test Ban Treaty. Even allowing a fourfold increase in the value the film established at the only time it changed hands in the marketplace—the \$780,000 in 1999 dollars that *Time Inc.* paid in 1963—the value of the film, they argued, was closer to \$3.5 million than the \$25 million proposed by the LMH appraisers.

The minority report also took exception to the use of great works of art as comparables since the attributes of these works—the status of the artist, their aesthetic appeal, their sales and ownership history, and the undeniable fact that there can be no real comparison between the original and a copy in terms of responding to the image—have little bearing on the value of the camera original of the Zapruder film as a historic artifact.

The arbitrators awarded LMH Company \$16 million, a sum that appears to be close to the mid-point between the government's estimate of \$1 million and the maximum of \$30 million set when the arbitration panel was established. The reaction to the award was somewhat hos-



tile, with many commentators arguing that the film should simply have been confiscated by the government as an invaluable historic document and as a crucial piece of evidence in the ongoing controversy surrounding the assassination. Even those conceding that the government had no right to seize the film without adequate compensation argued that \$16 million was too high an award. The issue that troubled most archivists and curators is that the government did not gain control of the copyright as a result of the award. Under the terms of the settlement all use of the images, aside from research on the premises of the National Archives, had to be approved by LMH Company.

In January 2000, the Zapruder family donated a first-generation copy of the film *and the copyright* to the Sixth Floor Museum at Dealey Plaza in Dallas, which is located in the Texas School Book Depository building from which, as the Warren Commission concluded, the fatal shots were fired. Assuming that the film is treated as an unpublished work under the Berne Convention and the copyright is protected for seventy years following the death of the creator, because Abraham Zapruder died in 1970, the film will not be in the public domain until 2040.

## Appraisal Methodology

The Zapruder film arbitration hearings illustrate the key role played by appraisers in assessing monetary value. One can argue that the Zapruder family was awarded at least \$10 million more than they would have been if not for the testimony *and status* of their appraisers. The testimony highlights the importance of qualified appraisers in assessing value, and in particular when monetary value has to be assessed in dealing with government agencies on tax credits for gifts to institutions designated as qualified recipients under the taxation legislation of the jurisdictions in which they operate.

The first principle to be observed is that the appraisal should always be conducted at arm's length. Neither the donor nor the recipient institution should participate in carrying out the appraisal. This is essential if there are legal issues such as insurance policies or tax benefits involved. In Canada, for example, the Canadian Cultural Property Export Review Board (CCPERB) requires two *independent* appraisals for property whose estimated fair market value is more than \$10,000 CAN. Below that sum one appraiser will do. The Board also accepts estimates